

OCT 28 1999

By Lina L. Gubman
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL
WATER DISTRICT,

Plaintiff,

vs.

CITY OF CHINO, et al.,

Defendants.

CASE NO. RCV 51010

Final Ruling--Sept. 30, 1999 Hrng.

Background

On February 19, 1998, this Court set aside its previous order appointing the California Department of Water Resources ("DWR") as Interim Watermaster and instead appointed a nine-member board consisting of representatives from the Overlying (Agricultural Pool), the Overlying (Non-Agricultural Pool), the Appropriative Pool, and three municipal water districts to serve as **Interim Watermaster** for a twenty-six month period commencing March 1, 1998, and ending June 30, 2000. To ensure that DWR is in a position to assume the duties of Watermaster at the end of the interim appointment should the nine-member board fail to operate independently and effectively, the Court directed the parties to engage in negotiations with DWR related to its takeover of Watermaster operations. The Court further directed the Interim Watermaster to notice a hearing no later than September 30, 1999, to report on the status of the negotiations. The parties were further reminded that the Court's order prohibits the Interim Watermaster from entering into any agreement that DWR will be obligated to assume (i.e., contracts wherein payment and/or performance of any kind whatsoever will be required after June 30, 2000). Current Interim Watermaster employees were reminded that if DWR were appointed as Watermaster at

1 the end of the interim appointment, Watermaster employee positions would terminate on
2 June 30, 2000, without further order of the Court. Further, DWR will not be required to
3 hire current Interim Watermaster employees upon its appointment; rather, Watermaster
4 employees may be rehired at the discretion of DWR and on such terms as DWR deems
5 appropriate.

6 On February 19, 1998, the Court also ordered the Interim Watermaster to notice a
7 hearing on or before October 28, 1999, to consider all parties' input as to the
8 continuance of the nine-member board as **Watermaster** after June 30, 2000. The
9 Court noted that the timely filing of all reports with the Court and the development of an
10 optimum basin management program are of significant interest to the Court in the
11 continuation of the nine-member board as Watermaster. The Court directed the Interim
12 Watermaster to develop an optimum basin management program and to submit the
13 optimum basin management program first to the Advisory Committee for review and/or
14 action, then to the Court no later than September 30, 1999, or show cause why it
15 could not do so. The Court also set a hearing on October 28, 1999, at 1:30 p.m., to
16 consider whether to approve and order full implementation of the program or consider
17 why the program has not been completed.

18 In partial compliance with the Court's order requiring the Interim Watermaster to
19 develop and to submit an optimum basin management program first to the Advisory
20 Committee for review and/or action, then to the Court no later than September 30,
21 1999, the Interim Watermaster has filed with the Court: (1) Optimum Basin
22 Management Program Phase I Report, dated August 19, 1999, and (2) Appendix A
23 Public Comments to the Report. The Interim Watermaster requests these documents
24 be filed and accepted by the Court **only as reports** and that the Interim Watermaster
25 be given an additional six months to prepare an implementation plan-- Phase II of the
26 Optimum Basin Management Program Report. The Interim Watermaster further
27 requests that the Court adopt a revised schedule for approval of the final Optimum
28 Basin Management Program (presently set for approval on October 28, 1999) and for
input and consideration as to the continuance of the nine-member board as

1 Watermaster after June 30, 2000 (also set for October 28, 1999). The City of Pomona,
2 Monte Vista Water District, and the State of California have filed responses to the
3 motion by the Interim Watermaster.

4 Order Re Status of Negotiations with DWR

5 The Interim Watermaster reports that on November 18, 1998, the Chief of
6 Watermaster Services wrote to DWR regarding an implementation plan for the
7 transfer of Watermaster operations. DWR responded to the letter on January 15,
8 1999, stating that DWR is ready to resume negotiations but in view of the fact that the
9 Interim Watermaster has been working adequately DWR believes it is in the parties'
10 best interests that negotiations should not be resumed until directed by the Court.
11 The Court notes that the Interim Watermaster and several other parties have
12 expressed concern regarding significant funding issues to be resolved in connection
13 with the development of an implementation plan for the OBMP. It might be the case
14 that DWR is in a superior position to obtain available federal and state funding for the
15 implementation plan; hence, it is crucial that the Interim Watermaster and DWR have
16 in place a plan for the orderly transfer of operations from the nine-member board to
17 the DWR at the end of the interim appointment SHOULD Watermaster or relevant
18 responsible organizations, among other things, experience obstacles to obtaining
19 necessary financing concerning implementation of the OBMP. Accordingly, the Court
20 hereby orders the Interim Watermaster to prepare and submit to DWR and file with
21 the Court no later than March 2, 2000, a proposed plan for the orderly transfer of
22 operations at the end of the interim appointment. DWR is invited to prepare a
23 response to the Interim Watermaster's proposal by no later than April 27, 2000, which,
24 if prepared, shall also be filed with the Court. Assuming DWR is still interested in
25 becoming Watermaster, the Interim Watermaster and DWR shall thereafter meet to
26 develop a joint proposal for the orderly transfer of operations, which shall be
27 submitted to the Court no later than July 13, 2000. This is not an appointment;
28 instead, it is a contingency plan, with no commitment regarding appointment of DWR
or any agency and/or person as Watermaster.

1 On July 13, 2000, at 1:30 p.m., the Court will conduct a hearing on the
2 continuance of the nine-member board. Interested parties are requested to file briefs
3 no later than June 29, 2000. The interim appointment of the nine-member board may
4 be extended to December 31, 2000. Thus, if the court determines not to continue the
5 nine-member board the new appointment will take effect on January 1, 2000. An
6 expressed reason for adjusting the timeline, among others, was the Court's concern
7 regarding adequate notice to Watermaster employees; however, the Court is
8 concerned that the timeline adjustment might be misinterpreted as an invitation to
9 procrastinate, which would be a miscalculation of the Court's concern regarding
10 timeliness of Watermaster responsibilities. On the contrary, the Court is concerned
11 whether or not the Watermaster is adequately staffed to perform its administrative
12 functions, evidenced by the tardiness of draft minutes posted on the Watermaster
13 Web Site, among other things. (As one might recall, there has been problems in the
14 past filing annual reports in a timely fashion—true, with the prior Watermaster
15 composition.) It seems as though an additional employee or the addition of a part-
16 time employee might be beneficial, assuming that it is contemplated that the posting
17 of minutes will continue to be untimely or priorities will have to be adjusted to get
18 current on matters not yet current. On balance, though, the Court finds that the
19 Watermaster is making positive progress toward achieving its stated goals, and it is
20 not the Court's function to order the number of employees of Watermaster, although it
21 is the Court's function to measure the effectiveness of the Interim Watermaster.

22 Order Re Status of Optimum Basin Management Plan

23 The Court commends the parties on the achievements accomplished to date on
24 the preparation of the OBMP and their commitment to complete a draft implementation
25 program report by February 15, 2000. The Optimum Basin Management Program
26 Phase I Report describes the issues that need to be addressed. The Phase I Report
27 describes the goals for management of the Basin, impediments to those goals, and
28 possible solutions to achieve the goals described. The focus of the Interim
Watermaster and the interested parties must now turn to choosing the solutions that

1 will best achieve the goals described and to determining how the solutions will be
2 implemented. The Court recognizes this requires further significant work by all of the
3 parties and encourages the parties to stay focused on solving the outstanding
4 implementation issues.

5 Comments received by the Court regarding the Optimum Basin Management
6 Program Phase I Report indicate parties may want to edit the Report some time in the
7 future and/or have continuing objections to some of the facts and conclusions in the
8 report. The Court, therefore, accepts the Phase I Report, including the Appendix A, as
9 a provisional report in conformance with the Court's Order to show cause why the
10 OBMP has not been submitted. Any discrepancies in the Report have been noted by
11 the comments to the Report submitted simultaneously to the Court as Appendix A and
12 any further comments submitted by Pomona, Monte Vista Water District and State of
13 California. A Supplement to Appendix A consisting of all written comments submitted
14 as part of the September 15, 1999 hearing will be filed with the Court and served on
15 all parties by the Watermaster. Any further issues that may arise in the course of
16 Phase II implementation discussions can be addressed in Phase II. The Court
17 recognizes that the parties reserve their rights to comment on and/or object to the
18 Phase I Report during the development of Phase II of the OBMP, and at the time the
19 final OBMP is considered. Receipt of the Phase I Report as provisional is not meant
20 to encourage further delay in Phase II implementation.

21 The Court hereby schedules a hearing at 1:30 p.m. on March 16, 2000, to
22 review the status of the OBMP and related CEQA matters. Interested parties are
23 requested to file briefs on or before March 2, 2000. The Court also hereby adopts
24 and incorporates herein by this reference the timeline attached as "Exhibit A". The
25 timeline includes a June 30, 2000, completion date for the Final OBMP. The Court
26 recognizes the efforts of the Chino Basin Watermaster over the past two years and
27 the demanding schedule that the process has required. The timeline for completion of
28 the Final OBMP requires a continued, focused effort. The Court would like to point
out, however, that the filing on February 15 includes a draft Phase II Implementation

1 Plan and draft MOAs. The parties then have an additional four months to prepare and
2 submit the Final Phase II Implementation Plan and Final MOAs as the Phase II Report
3 on the OBMP. Thus, the drafts submitted in February may be substantially modified
4 before being resubmitted in June. The Court has slightly modified the timeline to
5 provide for agency, board, and city council approvals of the final MOAs, subject to
6 Court approval, a comment period, and approval of the final OBMP.

7 Environmental Concerns

8 An issue has been raised as to the applicability of the California Environmental
9 Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") to the
10 adoption of the OBMP. For purposes of CEQA, a state court is not a public agency
11 and, thus, is exempt from its requirements. However, an argument may be made that,
12 although state courts are exempt from CEQA, state courts do not have the authority to
13 issue orders that would excuse a public agency from complying with CEQA. The Court
14 is mindful of the underlying purpose of CEQA, to ensure the maintenance of a quality
15 environment for the citizens of California. The Court is also mindful of the
16 Legislature's expressed policy that the state take all action necessary to provide its
17 citizens with, among other things, clean air and water, and to ensure that the long-
18 term protection of the environment is the guiding criterion in public decisions. To
19 facilitate resolution of the issue of the application of CEQA and NEPA to the adoption
20 of the OBMP, the Court hereby orders the Interim Watermaster and all other
21 interested parties to appear on November 18, 1999, to show cause why the Court
22 should not order the preparation of an environmental document in compliance with
23 CEQA and NEPA and direct Inland Empire Utilities Agency to proceed as the lead
24 agency to ensure timely preparation of an environmental document, to avoid delay in
25 adoption and implementation of the OBMP.

26
27 DATED: October 28, 1999

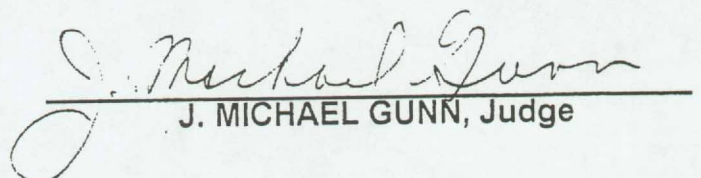
28 
J. MICHAEL GUNN, Judge

Exhibit A

TIMELINE*

DUE DATE	DESCRIPTION
July, 1999 to May, 2000	Throughout the process, subcommittees on Artificial Recharge and Basin Yield Maintenance are meeting on a regular basis regarding recharge, basin yield maintenance, and conjunctive use.
Oct. 28, 1999, 1:30 P.M.	CEQA/NEPA Brief Submitted to Court.
Nov. 18, 1999, 1:30 P.M.	Hearing on CEQA/NEPA & Proposed Timeline.
Feb. 15, 2000	Submit Draft Implementation Plan (comment period begins). Complete initial draft of MOA's re: Recharge, Yield Maintenance (including treatment), and Conjunctive Use.
Feb. 29, 2000	Draft Environmental Impact Report (DEIR) completed (public comment period begins).
Mar. 02, 2000	Interim Watermaster submits its contingency plan for transfer of operations to DWR.
Mar. 03, 2000 to May 17, 2000	Joint Pool & Advisory Committees meetings to discuss MOA's, DEIR, and Draft Implementation Plan.
Mar. 16, 2000, 1:30 P.M.	Status Hearing OBMP and related CEQA matters.
Apr. 27, 2000	DWR submits response to Interim Watermaster contingency plan for transfer of operations.
May 11, 2000	Joint Pool & Advisory Committees final discussions to complete MOA's, and Implementation Plan.
May 17, 2000	IEUA Hearing to certify Final EIR.
May 25, 2000	Watermaster Board hearing to consider final EIR, MOA's, and Implementation Plan for submission to Court.
June 15, 2000	Final OBMP (Final Phase One, Final Phase Two comprised of Final Implementation Plan and Final MOA's) and Resolution by agencies indicating readiness to participate in OBMP, subject to Court approval, filed with the Court.
June 23, 2000	Comments to Final OBMP filed with the Court (Final Phase One, Final Phase Two (Final Implementation Plan and Final MOAs).
June 29, 2000, 1:30 P.M.	Hearing on OBMP & Final EIR.
July 13, 2000, 1:30 P.M.	Hearing on continuance of nine-member Board.

*Notes:

1. This timeline does not reflect deadlines for comments, hearings, etc. planned in compliance with the CEQA process.